

CALIFORNIA STATE LANDS COMMISSION REGULATIONS GOVERNING CONTRACTOR SELECTION

INITIAL STATEMENT OF REASONS

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth indented and underlined.

NECESSITY FOR THE REGULATION

The proposed regulations are necessary because the legislature has expressly required that they be adopted by an agency before that agency contracts for any private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services. Section 4526 of the Government Code (Gov. C.) mandates that state agency heads contracting for those services shall adopt by regulation procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the type of services to be performed, and at fair and reasonable prices to the public agencies.

The California State Lands Commission (the Commission) must enter into various contracts for the services specified in Gov. C. Section 4526 in carrying it's duties under the Public Resources Code. The State Lands Commission (Commission) is authorized by Section 6108 of the Public Resources Code (PRC) to make and enforce all reasonable and proper rules and regulations consistent with law for the purpose of carrying out the provisions of, and incidental to, Division 6 of the PRC. Therefore, the Commission must adopt the proposed regulations in order to carry out it's responsibilities under statute.

PURPOSE FOR THE REGULATION, GENERALLY

The purpose and effect of the regulations, generally, is to implement the requirements of Gov. C. Section 4526. That provision reads as follows:

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. *In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management*

services may adopt by ordinance, *procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the type of services to be performed and at fair and reasonable prices to the public agencies.* Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful compensation, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100. (emphasis added.)

In implementing this provision through adoption of the proposed regulations, the Commission will establish a simplified and efficient procedure for the Executive Officer to contract for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

TECHNICAL, THEORETICAL AND EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

No technical, theoretical or empirical studies, reports or documents were relied upon in drafting these proposed regulations.

ALTERNATIVES TO THE PROPOSED REGULATIONS

The alternative would be to contract for listed professional services utilizing the standard competitive bidding process but that alternative would not comply with the requirements of section 4526 of the Government Code.

COSTS TO BUSINESS

The proposed regulations will have no adverse impact upon any business. When a Commission project requires one or more of the listed professional services, a statewide announcement of the project will be made. Any qualified entity will be entitled to submit a statement of qualifications and performance data.

There may be a benefit to businesses, since under the proposed regulations, businesses will not need to prepare and submit expensive and time-consuming formal proposals like those used in the standard competitive bidding process.

DUPLICATION OF FEDERAL LAW

The proposed regulations address state contracting procedures only and therefore do not conflict with or duplicate any federal regulations.

SPECIFIC PROVISIONS PROPOSED

2980. Purpose and Scope.

The purpose of this article is to establish, as authorized and required by Government Code Sections 4525 *et seq.*, procedures for securing architectural, landscape architecture, engineering, environmental, land surveying, and construction project management services.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

This provision addresses the overall intent of all of the proposed regulations Article 13. It essentially follows the provisions of Government Code Section 4526.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the regulation is to ensure that the scope and purpose of the provisions of Article 13 are the same as those required under Government Code Section 4526.

NECESSITY

This provision is necessary in order to ensure that there is no confusion over the scope and purpose of Article 13.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations. Since the proposed regulations are mandated by statute, any alternative would not be in full compliance with Government Code Section 4526.

2980.1 Definitions

As used in these regulations, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the

profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "Small business" firm is one that meets the definition of small business firm set forth in Title 2, California Code of Regulations, section 1896(n).

(c) "Commission" is the State Lands Commission.

(d) "Executive Officer" is the Executive Officer of the State Lands Commission or any person designated by the Executive Officer to act on behalf of the Executive Officer.

(e) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically and justifiably perform.

(f) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Government Code Section 4529.5 for management and supervision of work performed on state construction projects.

(g) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(h) "Publish" shall mean publication of notices describing projects for which architectural, landscape architecture, engineering, environmental, land surveying, or construction project management services will be required in the publications of the respective professional societies and in the State Contracts Register. "Publish" shall also include publication of such notices in electronic form through the Internet.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

This regulation provides definitions that are helpful in understanding the rest of the provisions of Article 13.

SPECIFIC PURPOSE OF THE REGULATION

The language in subsections (a), (e), (f) and (g) is taken directly from Government Code Section 4525(a), (d), (e) and (f), respectively, and are provided to here for ease of use and convenience of the reader, in that cross-referencing is made unnecessary. The definition of “small business” does cross reference to Title 2, California Code of Regulations, Section 1896(n) for the sake of consistency. In that case, cross referencing is used because the referenced definition is long and would be cumbersome if incorporated in these regulations. The definitions of “Commission,” “Executive Officer,” and “Publish” are included for convenience and clarity.

NECESSITY

This provision is necessary in order to ensure clarity and understanding with respect to the other provisions of Article 13.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations. Other definitions of the specified terms would not be consistent with governing statutes or related regulations.

2980.2 Conflict of Interest/Unlawful Activity Prohibited

Any practice which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration, is strictly prohibited, and each Commission employee is specifically prohibited from participating in the negotiation or selection process when that employee has a personal or business relationship with a person affiliated with, or has an interest in, any person or business entity seeking a contract with the Commission or solicited by the Commission for such a contract which would subject that employee to the prohibition of Section 87100 of the Government Code.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

This provision addresses the requirement under Gov. C. Section 4526 that regulations implementing that statute specifically prohibit the subject activities.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the regulation is to comply with the express provisions of Gov. C. Section 4526 and to ensure against corruption and unlawful activities in the contractor selection process.

NECESSITY

This provision is necessary in order to comply with Gov. C. Section 4526.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations. Since the proposed regulations are mandated by statute, any alternative would not be in full compliance with Government Code Section 4526.

2980.3 Establishment of General Criteria and Establishment of List of Pre-qualified Contractors.

(a) The Executive Officer shall publish at least annually a notice that solicits statements of qualification and performance data from firms that provide the services defined in Section 2980.1.

(b) The Executive Officer shall establish and publish a list of relevant general criteria which will form the basis for adding such firms to a list of pre-qualified contractors maintained by the Commission. The general criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, familiarity with pertinent regulatory processes, familiarity with project locale, previous experience with a specific type of project, and other considerations deemed relevant.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2980.3 establishes procedures whereby firms interested in providing services covered by these regulations could be added to a list of prequalified contractors.

SPECIFIC PURPOSE OF THE REGULATION

This process would simplify the ultimate selection process. This provision implements the provisions of Gov. C. Section 4527, which encourages agencies to adopt this kind of procedure.

NECESSITY

This provision is necessary in order to simplify the contracting process and to be consistent with the provisions of Gov. C. Section 4527.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

2980.4 Construction Project Management Expertise

Any individual or firm proposing to provide construction project management services pursuant to these regulations shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2980.4 requires those proposing to provide construction project management services to submit specified evidence of expertise and experience. The language is taken directly from Gov. C. Section 4529.5.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of Section 2980.4 is to ensure that those intending to offer construction management services understand what must be submitted with their offer. The language of Gov. C. Section 4529.5 is used verbatim for ease of use and convenience of the reader, in that cross-referencing is made unnecessary.

NECESSITY

This provision is necessary in order to be consistent with Gov. C. Section 4529.5.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations. Since the proposed regulations are mandated by statute, any alternative would not be in full compliance with Gov. C. Section 4529.5.

2980.5 Notice and Publication for Specific Projects

(a) The Executive Officer shall publish a statewide announcement of any project or projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction management services. Such announcement shall contain, at a minimum, the type of services required, a description of the project, a projected schedule for the project, a description of responsive material that must be submitted by firms not on the Commission's list of pre-qualified firms, and a date before which that responsive material must be submitted to the Commission.

(b) The Executive Officer may, prior to engaging a firm for a specific project, develop and include in the published statewide announcement for the project a list of relevant factors, if any, that may be considered in selecting a contractor for that particular project. Such factors may be considered by the Executive Officer according to the nature of the project, the needs of the State and the complexity and special requirements of that specific project.

(c) The Executive Officer shall endeavor to provide to all small business firms which have indicated an interest in receiving such announcements a copy of each project announcement. Failure of the Executive Officer to send a copy of an announcement to any firm or failure of such firm or firms to receive an announcement sent by the Executive Officer shall not operate to preclude any contract.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2980.5 provides the procedures to be followed by the Executive Officer when seeking a contractor for a particular project. Without these procedures, there would be nothing specifying what the Executive Officer must include in the required notice, to whom the notice should be provided and what should be considered prior to negotiations. Furthermore, Section 2980.5(c) is intended to ensure participation in small business firms, as required under Gov. C. Section 4526.

SPECIFIC PURPOSE OF THE REGULATION

This provision implements the provisions of Gov. C. Sections 4526 and 4527.

NECESSITY

This provision is necessary in order to be consistent with Gov. C. Sections 4526 and 4527. While containing more detail than the statutory provisions, this section 2980.5 provides further clarification and direction to the Executive Officer.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

2980.6 Estimate of Value of Services.

Before any discussion with any firm concerning fees for services provided in connection with a particular project, the Executive Officer shall cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contract or abandonment of any further procedure for the services to which it relates. At any time the Executive Officer determines the State's estimates to be unrealistic due to rising costs, special conditions, or for other relevant considerations, the estimate shall be reevaluated and modified if necessary.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2580.6 requires that, before any discussion with a firm concerning fees for services provided in connection with a particular project, the Executive Officer is to cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered.

SPECIFIC PURPOSE OF THE REGULATION

This provision provides direction to the Executive Officer as to how to determine whether an offer to provide contractor services is fair and reasonable.

NECESSITY

This provision is necessary in order to ensure that the Executive Officer has a basis for determining whether an offer to provide contractor services is fair and reasonable.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

2980.7 Negotiation of Contract

(a) After expiration of the notice/compliance period stated in an announcement, the Executive Officer shall evaluate current statements of qualifications and performance data on file with the Commission, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding the Commission's need for services, and the ability of each firm to provide those services to the Commission for the proposed project in a timely manner. The Executive Officer shall then select therefrom, in order of preference, based upon criteria established pursuant to sections 2980.3 and 2980.5, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) The Executive Officer shall, in accordance with section 6106 of the Public Contracts Code, negotiate a contract with the best-qualified firm for services at compensation that the Executive Officer determines is fair and reasonable to the State of California. Should the Executive Officer be unable to negotiate a satisfactory contract with the firm considered to be the best-qualified at a price the Executive Officer determines to be fair and reasonable to the State of California, negotiations with that firm shall be formally terminated. The Executive Officer shall then undertake negotiations with the second best-qualified firm. Failing accord with the second most qualified firm, the Executive Officer shall terminate negotiations. The Executive Officer shall then undertake negotiations with the third most qualified firm.

(c) Should the Executive Officer be unable to negotiate a satisfactory contract with any of the selected firms, the Executive Officer shall select additional firms in order of their competence and qualifications and continue negotiations in the same manner until a satisfactory agreement is reached.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2580.7 establishes the procedures the Executive Officer is to follow in negotiating with firms for services to be provided for a particular project. The provisions of Gov. C. Sections 4526.5, 4527 and 4528 relating to the negotiations for contractor services for a specific project are collected and organized together in this section.

SPECIFIC PURPOSE OF THE REGULATION

This provision implements the provisions of Gov. C. Sections 4526.5, 4527 and 4528.

NECESSITY

This provision is necessary in order to be consistent with Gov. C. Sections 4526.5, 4527 and 4528. While containing more detail than the statutory provisions, this section 2980.7 provides further clarification and direction to the Executive Officer.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations. No alternative would be sufficiently consistent with the provisions of Gov. C. Sections 4526.5, 4527 and 4528.

2980.8 Contracting in Phases

Should the Commission determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions at the time the initial phase is negotiated, provided that the Executive Officer shall have determined that the firm is the best qualified to perform the whole project at a fair and reasonable cost and that the contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2580.8 provides the Executive Officer with the ability to negotiate a total contract price or compensation for an entire project if the project is to be performed in phases. This provides greater flexibility to the Executive Officer in managing projects and contracts.

SPECIFIC PURPOSE OF THE REGULATION

This provides greater flexibility to the Executive Officer in managing projects and contracts where a project is to be performed in phases.

NECESSITY

This provision is necessary in order to ensure that the Executive Officer has the ability to manage certain phased projects effectively and efficiently.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

2980.9 Amendments.

In instances where the Commission or the Executive Officer orders a necessary change in the character or scope of work to be performed in the course of performance of the contract, the firm's compensation may, by written agreement between the Commission and the firm, be adjusted in an amount which reasonably reflects the value of the change from that character and scope of work which existed prior to the change.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Section 2580.9 provides the Executive Officer with the ability to negotiate contracts which allow for adjustments in compensation if changes are necessary in the character or scope of work to be performed.

SPECIFIC PURPOSE OF THE REGULATION

This provides greater flexibility to the Executive Officer in managing projects and contracts.

NECESSITY

This provision is necessary in order to ensure that the Executive Officer has the ability to modify contracts in the event of changes in the character or scope of work to be performed.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The Commission finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.